

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 804 of 1980

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

P.B. PEDI TRUST THROUGH ITS TRUSTEES: CHIMANLAL J. SHAH

Versus

UNION OF INDIA

Appearance:

MISS V.P.SHAH for MR BR SHAH for Petitioners
MR.H.M.MEHTA for Respondent No. 1
MR.S.B.VAKIL for Mr.M.H.Chhatrapati for no.2.
Mr.P.G.Desai, for Mr.G.N.Desai for no.3.
MR B.B.Naik for M/s. R.B.Bhatt & Co.for no.4.

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 04/12/97

ORAL JUDGEMENT (Per K.Sreedharan CJ.):

Petitioner is Parshwanath Bhagwan's Pedi, a Public Trust represented by five trustees (hereinafter

referred to as the Trust). This trust is registered under the Bombay Public Trusts Act and is an assessee under the Income Tax Act with Permanent Account No.P.31-00-HN-4871/Addl.A/Rev. Navsari.

Navsari Jain temple is owned and managed by this trust. Large steel cash box, known as Bhandara, is kept in the temple to receive offerings from the devotees. The said box was last opened on October 16, 1977. Offerings put in the box remained in it till it was opened on January 19, 1978 when the Government promulgated High Denomination Bank Notes (Demonetisation) Ordinance 1978 (hereinafter referred to as the Ordinance), which came into force on January 16, 1978. The Trust sealed the cash box. Executive Committee of the Trust opened the box on January 19, 1978. 76 high denomination currency notes of Rs.1000/ each, were found in the said box. For getting those notes exchanged, declaration form was filled up and submitted to the State Bank of India-respondent no.3- alongwith the said notes. The third respondent rejected the declaration form as per letter dated 27-7-1978 (Annexure B). Aggrieved by the same the Trust took up the matter with the Central Government. The Central Government declined to exchange the said notes and the decision was communicated to the Trust by letter dated 25-4-1979 (Annexure C). Hence this petition, inter alia, praying for issuance of a writ of mandamus directing respondents to pay the petitioner Rs.76,000/- in exchange of the 76 currency notes of high denomination value of Rs.1000/- each, tendered by the petitioner under Ordinance 1978.

On behalf of the third respondent -State Bank of India- Affidavit-in-reply dated 29-7-1986 has been filed. The contention taken therein is that after 16-1-1978 the Trust cannot be the owner of the notes. The trust has not stated that the trust had received the notes prior to 16-1-1978. Therefore, the trust is not entitled to get the notes exchanged. The policy underlying Ordinance has been highlighted in the Afrfidavit-in-reply.

On behalf of the 2nd respondent-Reserve Bank of India - Affidavit-in-reply dated 4-8-1994 has been filed. The contention taken therein is that the case putforth by the petitioner that it sealed the cash box on 16-1-1978 is not true and no such fact was stated in the declaration form submitted to the Bank while seeking exchange of the high denomination notes. It has gone to the extent of stating that the statement of the trustee shows that they had come into possession of the notes after 16-1-1978. The Policy underlying the Ordinance has

also been reiterated. It was lastly stated that the petitioner has no justification in law to approach this Court under Article 226 of the Constitution.

The petitioner produced 76 high denominates currency notes of Rs.1000/- each for exchange before the third respondent as back as on 19-1-1978. Alongwith the notes the declaration in the prescribed form which is Schedule to the Ordinance was also filed. Column 15 of the Declaration Form relates to the reasons for keeping the amount in cash in notes of such high denominations. As against this Column the petitioner had entered "this sum has come out of the Box kept in the Jain Temple". Column 16 of the Declaration form is "when and from what source did the bank notes come into possession ? In answer to this query, the petitioner stated : "Out of the Box after 16-10-1977". According to the petitioner the above answers, given in answer to the queries in columns 15 and 16 were sufficient answers and consequently the column was filled up by giving all details when the high denomination currency notes were submitted to the Bank for exchange together with the form of Declaration filled up in all particulars. It is contended that the bank was bound to give exchange value.

By promulgation of the Ordinance from the evening of 16-1-1978 high denomination currency notes ceased to be valid tenders. Such notes could be got exchanged by any one if he submitted a valid declaration as per the Schedule to the Ordinance, provided it is so filed on or before 19-1-1978. Any person who had high denomination currency notes with him which has been demonetised by the Ordinance, could get exchange value of such currency notes within three days of the coming into force of the said Ordinance. The only requirement was that he should furnish all the details required in the form of declaration. Section 7 of the Ordinance allowed exchange of high denomination currency notes. sub-section (4) of Section 7 provides that unless it appears that the declaration has not been complete in all material particulars the Bank, to which an application for exchange of high denomination bank notes is made, shall pay the exchange value of the said notes to the owner or the declarant. If the owner or the declarant has no bank account, the exchange value of the said notes shall be paid after proper identification. Sub-section (5) provides that when the Bank is not satisfied with the declaration, it can ask the declarant to furnish the material which have been omitted by him. When the declarant omits to supply the details, the Bank can return one copy of the declaration to the declarant and

refer the matter to the Central Government stating the reasons for refusing to exchange. On such reference to the Central Government as per sub-sec.(6) of Section 7 the Central Government is to make inquiries to get further details from the declarant. Thus, on reading the aforesaid provisions it appears that a party who approaches the bank for getting exchange of a high denomination currency notes demonetised by the Ordinance, can get the exchange without any hinderance if the application was filed on or before 19-1-1978 and the declaration form contained all particulars.

Attempt to get exchange of demonetised high denomination notes after 19th and 24th January 1978 stood on a different footing. In cases where the exchange was sought for after 19th and before 24th January 1978, the applicant will have to substantiate the reasons for the delay. In cases of this nature, falling under Section 8 of the Ordinance, the Bank can refuse exchange. If the reserve bank so refuses the payment, the aggrieved party has right to appeal to the Central Government.

Constitutional validity of the High Denomination Bank Notes (Demonestisation) Act, 1978 (hereinafter referred to as the Act) and the scope and ambit of Sections 7 and 8 of the Act were considered by a Constitution Bench of the Apex Court in the case of Jayantilal R.Shah Vs. Reserve Bank of India and ors. AIR 1977 SC 370 The Apex Court upheld the constitutional validity of the said Act. While dealing with the provisions of sections 7 and 8 of the Act, Their Lordships observed :

"...From a combined reading of Sections 7 and 8 it is evidently clear that on furnishing a declaration complete in all particulars in accordance with sub-section (2) of Section 7 by January 19, 1978, the holder was entitled to get the exchange value of his notes from the Bank without any let or hindrance; thereafter, till January 24, 1978, he was also entitled to such exchange from the Bank if he could satisfactorily explain the reasons for his inability to apply by January 19, 1978 and after that date the Central Government was empowered to extend the period of such exchange. Such being the scheme of the Act regarding exchange of high denomination bank notes it cannot be said that the time and the manner in which the high denomination bank notes could be exchanged were unreasonable, unjust and violative of the petitioners fundamental rights."

By the Ordinance the high denomination currency notes were demonetised with effect from the night of January 16, 1978. Persons who were having such currency notes were given right to move the bank for getting them exchanged. For getting the notes exchanged within three days i.e. till 19th January 1978 one needed to produce a declaration filled up with all material particulars only. In case the particulars are found to be insufficient, the bank could ask further details. If the applicant fails to furnish such details, the bank should refer the matter to the Central Government. The Central Government after due inquiry should take a decision as to whether the notes are to be exchanged or not. In other words, the bank to which the application was made for exchange of high denomination notes on or before 19-1-1978 had no right to reject the claim. In the instant case, the petitioner submitted 76 high denomination currency notes to the third respondent for exchanging the same. Alongwith the notes declaration in the prescribed form was also filled up. It is not the case of the third respondent that the declaration form was not complete in all material particulars but they had rejected the claim as per communication Annexure B. For a proper understanding of the stand taken by the Bank, we read the same.

" With reference to the above, we have to inform you that we have rejected your Declaration Form vide Income-tax Officer's letter No.HD/AA(Rev)/1977-78 dated 7-3-1978. We forward herewith one copy of your declaration for your information."

The reason stated therein can under no circumstances be treated as a valid reason as per the provisions contained in the Ordinance or the subsequent Act. No Income Tax Officer was given any power to direct the Bank to refrain from making payment.

Learned Counsel representing the third respondent State Bank of India, made available to us the letter of the Income Tax Officer referred to in the communication dated 27-7-1978 (Annex.B). That letter stated that the statements of the trustees of the petitioner trust were recorded and their explanation for opening the charity box on 19-1-1978 instead of 17-1-1978 is not convincing. Alongwith that data the statement of the declarant -the then President of the Trust- is also made available to us. His statement was recorded in question and answer form. To the question as to why the charity box was not

opened on 16-1-1978 immediately after the Ordinance, he replied that the charity box was to be opened in the presence of all the trustees. As two of the trustees were out of station and their presence was available only during the night of 18-1-1978, the box was opened in the morning of 19-1-1978. Correctness or otherwise of that statement need not deter us for the simple reason that as per section 7 of the Ordinance any person who was having custody of the high denomination currency notes, demonetised by the Ordinance could approach the bank for exchanging the same within three days therefrom on his furnishing the declaration form complete in all respects.

Learned Counsel representing the respondents brought to our notice two decisions of the Division Bench of this Court in Special Civil Application No. 964 of 1979 and Special Civil Application No. 2262 of 1979 to contend that the petitioner herein is not entitled to get exchange of the said high denomination currency notes. These two decisions, we are afraid, are not of any assistance to the respondents. From the judgment in SCA No. 964/79 it is not clear as to when the application was made for exchanging the high denomination notes, but reading of the judgment makes it clear that the Court was considering the impact of Section 8 of the Act. It means that the application was filed for exchange after 19-1-1978. The decision in relation to such a case cannot be of any assistance for deciding the rights of the parties where the application for exchange was filed on or before 19-1-1978. In the second decision referred to above, the application for exchange of currency notes was filed on 23-1-1978 and therefore, that case falls outside the purview of Section 7 of the Act. Thus, these two decisions have no relevance to the facts of the present case. In Special Civil Application No. 2262/79, the Court has observed:

"....It may be noted that within three days of 16th January 1978, high denomination notes could have been presented at many more places. If a holder does not avail of that opportunity and delay the presentation of high denomination notes, he cannot complain that he is required to go to a distant place for tendering them in order to claim their exchange value."

These observations also support our conclusion that if the application is filed on or before 19-1-1978, the notes have to be exchanged if the declaration was complete in all material particulars. In case the declaration form was not complete in all material

particulars the bank should have or could have refer the matter to the Central Government. Such a course having not been adopted by the State Bank of India, it cannot be said that the declaration filed by the petitioner was wanting in material particulars.

The result, therefore, is that the action of the 3rd respondent in not giving exchange was clearly illegal. We direct the 3rd respondent to give exchange value of the notes submitted by the petitioner within one week of receipt of copy of this order. If it is not done, the amount will carry interest at the bank rate from the the date of expiry of one week till payment.

Rule is accordingly made absolute with no order as to costs.

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